ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Rulemaking of Pacific	)	RM-8643
Bell Mobile Services Regarding a	)	
Plan for Sharing the Costs of	)	
Microwave Relocation	)	

To: The Commission

REPLY COMMENTS

BELLSOUTH CORPORATION
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June 30, 1995

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Petition for Rulemaking of Pacific Bell Mobile Services Regarding a Plan for Sharing the Costs of Microwave Relocation	))))	RM-8643

To: The Commission

REPLY COMMENTS

BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Enterprises, Inc., BellSouth Wireless, Inc., and BellSouth Personal Communications, Inc. (collectively "BellSouth"), by their attorneys, hereby reply to comments submitted in response to a petition for rulemaking filed by Pacific Bell Mobile Services ("PBMS") regarding a plan for sharing the costs of relocating microwave licensees.[1]

SUMMARY

BellSouth supports the creation of a plan for sharing the costs of co-channel microwave relocation among all PCS licensees that benefit from the relocation. In this regard, BellSouth supports PCIA's proposal which includes a cost sharing cap of $250,000 per microwave link and an additional cost sharing cap of $150,000 for the construction of towers. BellSouth believes that a cap of $250,000 on general relocation expenses is reasonable and a separate cap of $150,000 should cover the costs of constructing all towers associated with a link. Additionally, BellSouth suggests that PCS licenses be conditioned on compliance with any cost sharing rules

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1 *See* Pacific Bell Mobile Services' Petition for Rulemaking (May 5, 1995), FCC Public Notice, Report No. 2073 (May 16, 1995) ("Petition").

ultimately adopted in this proceeding. To further develop the cost sharing proposal, BellSouth supplies a detailed description of how a clearinghouse would administer such rules. These rules should preclude challenges to the amount due under the cost sharing formula based solely on the availability of a less expensive, alternative means for resolving technical interference. Finally, BellSouth suggests that the voluntary negotiation period be shortened for non-public safety licensees.

I. The PCIA Cost Sharing Proposal Should Be Adopted

As a member of the Personal Communications Industry Association ("PCIA") and a participant in the discussions that led to the development of the PCIA cost sharing proposal, BellSouth supports PCIA's proposal but believes that some aspects of the proposal may need clarification. In the first instance, the cost sharing plan does not seek to limit the amount of compensation a microwave incumbent may receive for each link. Rather, the plan only limits the amount which will be shared among PCS licensees.

Additionally, it may be unclear whether PCIA's proposal caps relocation costs on a *per link* or *per system* basis and whether its separate cost sharing proposal regarding tower construction limits expenses on a *per tower* or a *per link* basis. In its comments, BellSouth recommended that a cost sharing cap of $250,000 *per link* be proposed for relocation expenses.[2] BellSouth also proposed a separate cap of $150,000 for the construction of all towers necessary to replace a

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2 BellSouth Comments at 3. A microwave "link" is comprised of paired transmitting and receiving antennas, and associated electronics, separated by an air interface. Signals usually pass in both directions, on different frequencies. For example, the north end of a link will receive a signal transmitted from the south end at 1855 MHz. The north end also will be transmitting a signal to the south end at 1935 MHz. A microwave "system" typically consists of multiple links connected together to cover great distances.

link.[3] Thus, if a 2 GHz bi-directional path is being relocated for $200,000, and the new path requires the construction of two towers with a cumulative cost of $200,000, the total cost to be shared among PCS licensees would be $350,000. Although the entire cost of the non-tower portion of this relocation would be shared because it was within the $250,000 cap, only $150,000 of the cost of tower construction would be shared. The PCS licensee relocating the microwave incumbent would not be reimbursed for the $50,000 which exceeded the cap for constructing towers. Because there is a separate cap for tower construction, no tower construction costs should be part of the $250,000 relocation costs limit.[4]

BellSouth's proposal mirrors PCIA's proposal. Specifically, PCIA states that there should be a "maximum cap of $250,000 in costs *per microwave link*, plus $150,000 for situations where it is necessary to build a new tower."[5] Because PCIA later refers to its proposal as a "system replacement cap,"[6] however, it should clarify that its proposal limits shared relocation costs on a *per link* basis, rather than a per system basis. Further, a PCS licensee should be required to share relocation costs if either endpoint of a relocated microwave link was located in

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3 BellSouth Comments at 3.

4 Non-cash consideration should trigger compensation under the cost sharing rules, provided it can be easily quantified. The cost of communications services can be determined, for example, based on the tariff for the service or, if not tariffed, the lowest wholesale rate for the service.

5 PCIA Comments at 5.

6 *Id.* at 13. Similarly, the proposed formula references the "total amount to relocate [a] system" as opposed to the cost to relocate a link. *Id.* at 15, 26 (App.).

its market and the PCS licensee's system would have caused harmful interference to, or received harmful interference from, the relocated co-channel link.[7]

Additionally, PCIA's separate cap of $150,000 for tower construction should apply on a *per link*, not a *per tower* basis.[8] In other words, if the relocation of a 2 GHz microwave link requires the construction of two towers, the additional cost sharing cap for the construction of both towers should be limited to $150,000, not $300,000 ($150,000 per tower).

II. Compliance With Cost Sharing Rules

Cost sharing complaints should be resolved quickly. In this regard, BellSouth continues to propose that all PCS licenses should be conditioned on compliance with any cost sharing rules adopted in this proceeding, including participation in the clearinghouse. Pursuant to Sections 303(r) and 332(b)(1) of the Communications Act, the Commission may "prescribe such restrictions and conditions . . . as may be necessary to carry out the provision of [the Communications Act]."[9] Requiring compliance with the cost sharing rules is consistent with the mandate of Section 309(j) of the Communications Act to ensure the rapid deployment of new wireless technologies. If licensees are not required to participate in cost sharing, relocation will be delayed because PCS licensees will have a disincentive to relocate incumbent microwave licensees if their competitors will benefit from the relocation without expending any financial

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7 *Cf.* PCIA Comments at 10. Because microwave systems are not licensed on a geographic basis, many links will cross MTA and BTA boundaries, with each endpoint in different markets. Requiring both endpoints to be in a market before a cost sharing obligation is triggered will deter microwave *system* relocations because the party paying for the relocation ("Relocator") will not be entitled to reimbursement for links which cross market boundaries.

8 PCIA Comments at 5, 12-13, 15-16.

9 47 U.S.C. §§ 303(r), 332(b)(1).

resources. There is no reason to force the party causing the relocation to subsidize the operations of subsequent PCS licensees.[10]

Conditioning licenses will not create an administrative burden on the Commission. The cost sharing rules should require parties to utilize alternative dispute resolution techniques, as the relocation rules currently do, rather than the traditional FCC complaint process, for resolving disagreements.[11] If an entity refuses to utilize these techniques, or to abide by the decision reached thereby, the Commission should impose a fine or terminate its license. The possibility of such action should encourage broad participation, minimize disputes, and prevent an administrative burden on the FCC. Any administrative burden will cease ten years after the last PCS license is awarded — the date the cost sharing program terminates under PCIA's proposal.[12] Complaints should not be deferred to the renewal process, in which case a licensee refusing to contribute its share would be able to retain the money owed to the Relocator for as long as ten years.[13] Moreover, a renewal proceeding is unlikely to be an effective vehicle for resolving

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10 At a minimum, if PCIA's proposal is adopted, and contribution complaints are not resolved until renewal, interest should be calculated on the amount due the Relocator.

11 *See Redevelopment of Spectrum,* ET Docket No. 92-9, *Second Memorandum Opinion and Order*, 9 FCC Rcd. 7797, 7801-02 (1994) ("*Second MO&O*").

12 BellSouth opposes the proposal that cost sharing obligations terminate five years after relocation. *See* Southwestern Bell Mobile Systems ("SWB") Comments at 5. SWB's concern that later entrants should not be burdened by cost sharing obligations is adequately addressed by the proposed cost sharing rules which reduce contributions based on a number of factors, including the timing of a PCS licensee's market entry. *See* Petition at 8, PCIA Comments at 15.

13 *See* PCIA Comments at 19-20.

decade-old cost sharing disputes.[14] Furthermore, legislation could change the license term or eliminate renewals altogether, thereby making enforcement of the cost sharing system through renewals an impossible task.

III. Operation Of The Clearinghouse

Although PCIA provides some information regarding the mechanics of its cost sharing plan, a more detailed description of these mechanics may be beneficial for the preparation of a notice of proposed rule making on PCIA's proposal. BellSouth has been actively involved in the development of the PCIA proposal and its understanding of how the proposed clearinghouse would operate is provided below.

First, the Commission should adopt rules which allow incumbent 2 GHz licensees to assign the licenses for their former facilities to the Relocator.[15] Once the licenses are assigned, the Relocator should be entitled to interference protection as though the facilities were still in existence (*i.e.*, had not been relocated).[16] In essence, the Relocator will have a "virtual link" that must be coordinated with and which is entitled to interference protection.

As the licensee of this virtual link, the Relocator will be entitled to receive Prior Coordination Notices ("PCN") from other PCS licensees which subsequently wish to commence operations. Once the Relocator receives the PCN, it can assess whether operation by the new PCS licensee will cause interference to its virtual facility, based on one of the industry standards

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14 A lengthy delay in the resolution of a sharing dispute effectively means the Relocator is financing, at no interest, the cash obligation of the PCS licensee refusing to pay.

15 *See* Petition at 10; PCIA Comments at 11.

16 In this regard, the Commission should consider a modification of its rules to streamline the license assignment process. *See* 47 C.F.R. § 94.47.

for determining microwave interference, such as TIA Bulletin 10, Version F.[17] If it determines that interference would have occurred if the facility were still operational and that the new PCS licensee is licensed for a MTA/BTA in which one of the link's end points is located, the Relocator would then submit a copy of the PCN and an itemized list of the costs of the relocation (including any contracts) to the clearinghouse.

Alternatively, the Relocator could designate the clearinghouse as its agent for the purpose of determining whether interference would have occurred. Many Commission licensees currently use entities such as Comsearch to act as agents with regard to microwave-to-microwave interference. Because the clearinghouse may be acting as the agent for many parties for the purpose of determining whether PCS operations will cause interference to a virtual microwave link, each PCS licensee also should be required to send copies of its PCN to the clearinghouse.[18]

Upon designation as an agent or, if not an agent, receipt of a PCN, the clearinghouse will create a file regarding the cost of the relocation. The file will contain copies of any relocation agreements, a detailed list of the costs of relocation, and a list of all parties that have contributed to the cost of relocation to date.

Once the file is created, the clearinghouse will contact the "interfering" party and request that it contribute to the costs of the relocation in accordance with the cost sharing formula

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17 Although a rulemaking may be beneficial for establishing new PCS-to-microwave interference criteria, the cost sharing process can proceed under the existing industry standards for determining interference during the pendency of the rulemaking. *See* Petition at 8; PCIA Comments at 17-18. *Cf.* SWB Comments at 3-4.

18 *See* BellSouth Comments at 5.

adopted in the proceeding. The interfering party will be required to submit its contribution to the clearinghouse prior to commencing operations.[19] Once the contribution is received, the clearinghouse will pay the Relocator (and any other parties who previously contributed) in accordance with the cost sharing formula. The name of the contributor then will be associated with the file for the relocated link so that when other potentially interfering facilities are proposed, the Relocator and the contributing parties will be reimbursed.

IV. Contribution Due Under The Cost Sharing Formula Should Not Be Reduced Absent Agreement By All Affected Parties

Southwestern Bell suggests that subsequent PCS entrants should be allowed to reduce the contribution amount due to a Relocator under the proposed formula by showing that less costly means were available to avoid interference.[20] BellSouth disagrees. Every licensee will have a different perspective regarding what constitutes comparable facilities and what is the best method for resolving interference. Allowing every PCS licensee to contest the cost of relocation, based on its view of comparable facilities, will result in needless delay and litigation. A cap on the costs that can be shared should be sufficient to prevent subsequent licensees from paying premiums or excessive costs for relocation. Accordingly, if a PCS licensee and a microwave

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19 The Commission should modify its rules to make clear that frequency coordination is not complete until a licensee submits any contribution due under the cost sharing rules. An exception can be made, however, to permit entrepreneurs and small businesses to submit payments in installments.

20 SWB argues that the Commission needs to clarify the definition of interference. SWB Comments at 3; *see* Cox Communications, Inc. Comments at 3. BellSouth believes that TIA Telecommunications Systems Bulletin 10-F, the interference standard referenced in Section 24.237 of the Commission's rules, sufficiently defines the concept of interference.

licensee reach a mutually agreeable relocation arrangement, a subsequent licensee should not be able to contest the arrangement.

Further, Southwestern Bell argues that it should not have to contribute to relocation if interference problems could have been resolved without relocation. Proving that there was a less expensive mechanism for resolving interference, however, does not establish that the incumbent microwave licensee would have agreed to such a solution. Thus, the contribution due under the formula should not be reduced because there may have been a less expensive technical alternative available.

For example, Southwestern Bell argues that it should be able to reduce or avoid the contribution due for relocating a facility if it can establish that interference could have been resolved by re-filtering of the receiver. There is no basis, however, for assuming that a microwave incumbent would have acquiesced to re-filtering rather than relocation. In fact, it is unlikely that an incumbent microwave licensee would agree to re-filtering. Although interference may be avoided through the use of filters, it is only a temporary solution. Filters reduce the size of the "interfering spectrum," but not the potential for interference. Thus, as PCS systems are built-out and additional capacity is needed, new interference problems will inevitably arise, even with the use of filters, because the microwave facilities will be operating on spectrum that is needed for additional PCS capacity. Re-filtering is technically feasible, but it only prolongs the inevitable; the incumbent microwave licensee likely will need to be relocated.[21] It is not in the incumbent microwave licensee's interest to allow a PCS licensee to

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[21] There may be some limited circumstances in which re-filtering may permanently resolve interference problems. Because these situations will be relatively rare and there is no (continued...)

disrupt its operations so that filters can be installed with the knowledge that it will suffer another disruption once it eventually needs to be relocated. Accordingly, a subsequent PCS licensee should not be allowed to use the availability of filters, or other less costly (and temporary) means for avoiding interference, as a mechanism for reducing the contribution it must make under the cost sharing formula.

V. A Cost Sharing Mechanism Will Facilitate PCS Deployment

Virtually all parties support the creation of a cost sharing mechanism.[22] By requiring cost sharing, the relocation of entire microwave systems, rather than individual links, will be encouraged because the Relocator will be entitled to compensation. Although incumbent 2 GHz microwave licensees support cost sharing rules which facilitate system relocations, they oppose the establishment of a cap on the costs that can be shared. According to these licensees, a cap on shared costs will interfere with the marketplace.[23] BellSouth disagrees with this assessment.

Currently there is no mechanism for sharing the expenses associated with relocating existing 2 GHz microwave facilities to comparable facilities operating on different frequencies or different media. For most incumbent 2 GHz microwave licensees, there is a two-year window during which microwave licensees can voluntarily negotiate with PCS licensees regarding the

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21 (...continued)
guarantee that the incumbent microwave licensee will agree to re-filtering rather than relocation, a PCS licensee should not be able to challenge the amount due under the contribution formula because other options were available.

22 *See* Comments of BellSouth at 1-6, PCIA at 6-10, Association of American Railroads ("AAR") at 3-4, Sprint Telecommunications Venture at 3, Cox Enterprises, Inc. at 3, Metropolitan Water District of Southern California at 4, American Petroleum Institute ("API") at 6, UTC at 3-4, Cellular Telecommunications Industry Association at 5.

23 UTC Comments at 6; City of San Diego Comments at 7; API Comments at 6.

relocation of their microwave facilities.[24] If the microwave and PCS licensees cannot agree on a relocation plan during this two-year window, a one-year period of mandatory negotiations commences. At the conclusion of this one-year negotiation period, incumbent microwave licensees will be forced to relocate their interfering facilities.[25] Accordingly, if a microwave licensee is not amenable to relocation, it can refuse to agree to a relocation plan and delay PCS deployment by three years.

On April 5, 1995, the two-year period for voluntary negotiations commenced.[26] Many problems have arisen, however, since the opening of this negotiation period. First, PCS licensees have been reluctant to pay for relocating incumbent 2 GHz microwave users because there is no cost sharing mechanism in place. A PCS licensee has a disincentive to expend its own financial resources to clear the band if its competitors can benefit thereby, saving their resources for building out their systems. Second, many incumbent microwave licensees have demanded the payment of substantial sums of money in return for their willingness to relocate during the voluntary window. For example, incumbent licensees are being advised that, because of the "voluntary negotiation period, *comparable facilities [are the] worst-cast scenario*. Even if you are eventually relocated involuntarily, you always are entitled to comparable facilities. If

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24 47 C.F.R. § 94.59(b). For public safety licensees, there is a three-year voluntary negotiation period, followed by a two-year mandatory negotiation period. *Id.*; *see also Second MO&O*, 9 FCC Rcd. at 7802.

25 *See Redevelopment of Spectrum*, ET Docket No. 92-9, *Memorandum Opinion and Order*, 9 FCC Rcd. 1943, 1944 (1994) (stating that involuntary relocation will occur at the end of the negotiation periods).

26 "Wireless Bureau Announces Initiation of Voluntary Negotiation Period," FCC Public Notice, DA 95-872 (Apr. 19, 1995). This should also be the date on which the cost sharing plan is deemed to have commenced.

you relocate voluntarily, you are entitled to anything that is mutually agreeable."[27] Relocation costs should be compensatory in nature, rather than a windfall for microwave incumbents.

A cost sharing plan should solve the first problem, but a cap on the amount of costs that can be shared is necessary to address the second problem. Although the microwave incumbents essentially argue that a cap will interfere with the free market and will reduce the amount they receive for relocation, it is simply not true. If a PCS licensee is willing to pay more than the actual cost of comparable facilities -- a premium -- to ensure that a microwave licensee agrees to early relocation, a cost sharing cap should not eliminate the willingness of that provider to pay a premium.

Microwave incumbents object to a cost sharing cap for the following reason: a cost sharing mechanism without a cap will allow the incumbent microwave licensee to demand enormous amounts of money for relocation, with no relationship to cost,[28] because the PCS licensee ultimately would be reimbursed for much of the expense. If the Relocator is willing to pay $400,000 for relocation and believes that another PCS licensee will interfere with the microwave link within a short time of relocation, a microwave licensee would be able to demand $800,000 from the Relocator because the second PCS licensee will have to pay for fifty percent of the relocation costs under the cost sharing formula. Thus, although the Relocator's out-of-

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27 *See* Keller and Heckman, Telecommunications Advisor, Volume IV, Spring/Summer 1995 (emphasis added); *see also* UTC Service Corporation Bulletin, "Important Information For All 2 GHz Licensees - Big Money and Your 2 GHz Microwave Band Relocation," Nov. 21, 1994.

28 Indeed, some commenters suggested that the price of relocation should be based on fair market value (UTC Comments at 6) or the free market (City of San Diego Comments at 8).

pocket expenses will remain $400,000, the microwave incumbent will receive a windfall which greatly exceeds the cost of its relocation. The clearing of spectrum for PCS use should not be utilized as a revenue generating mechanism by microwave incumbents.

VI. A Cost Sharing Cap Of $250,000 Is Reasonable

One party asserts that the $600,000 cap proposed by PBMS has no basis and implies that the average cost of relocating 2 GHz facilities would exceed the caps proposed by PBMS and PCIA.[29] The rationale provided is that relocating one 2 GHz link to 18 or 23 GHz will require three or four replacement hops, potentially causing the cost of relocation to exceed the proposed cap. Although BellSouth believes the asserted costs are somewhat outdated and inflated,[30] it does concur with the proposition that it is more expensive to replace one link with three or four links than it is to replace it with only one link.

In this regard, 2 GHz microwave replacement facilities would not normally be engineered to be replaced with 18 or 23 GHz facilities. Typically, a single 2 GHz link will be replaced by a single 6 GHz link. Thus, if 6 GHz is used for replacement facilities, relocation costs would be significantly less than those discussed by AAR. Further, a 2 GHz path can be relocated to 6 GHz

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29 AAR Comments at 6-8. As discussed *supra*, BellSouth supports a cost sharing cap of $250,000 for relocation expenses and a separate cap of $150,000 for the construction of all towers associated with a microwave link.

30 BellSouth estimates that relocation to 18 GHz facilities can be accomplished for approximately $94,600 — $70,000 for comparable 18 GHz transmitters/receivers ($60,000) and replacement antennas ($10,000); $300 to $3,500 for frequency coordination ($600); and $24,000 to $34,000 for minor structural improvements ($24,000). Additionally, the cost of constructing one new tower per link would be approximately $82,000, well within the proposed cap on tower construction expenses.

for approximately \$156,600 to \$189,500.[31] Even under AAR's estimates (\$125,300 to \$203,500 per link),[32] PCIA's cap of \$250,000, plus an additional \$150,000 if towers must be constructed, is reasonable.

In fact, the OET Study relied on by AAR indicates that most microwave facilities will be relocated to the 4 and 6 GHz frequency bands because relocation to higher frequency bands would require the acquisition of additional transmit/receive sites.[33] Further, "the study estimated that the average costs per facility of frequency coordination, antenna upgrades, improvements to antenna structures, and other relocation costs would be approximately \$25,000."[34] Thus, the cost sharing cap also is reasonable under OET's estimates.

Placing a cap on the amount of shared costs simply allows the Relocator to pay whatever it wants for relocation subject to the condition that it will not be reimbursed for premiums. Further, because all PCS providers will not have to contribute for premiums, the relocation costs of subsequent PCS entrants will be less, thus leading to lower prices for consumers.[35] A cost

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31 This figure was derived by using the same formula as AAR: \$132,000 for comparable 6 GHz transmitters/receivers (\$116,000) and replacement antennas (\$16,000); \$300 to \$3,500 for frequency coordination (\$600); and \$24,000 to \$34,000 for structural improvements (\$24,000). Additionally, in some circumstances it may be necessary to install Ultra High Performance antennas on some links which would increase the cost by \$24,000.

32 AAR Comments at 7.

33 *See* Paul Marrangoni, *et al.*, FCC Office of Engineering and Technology, "Creating New Technology Bands for Emerging Telecommunications Technology," OET/TS 92-1, at 16-18 (Jan. 1992) ("OET Study"). There is virtually no discussion of relocation to the 18 and 23 GHz frequency bands in the study.

34 *Id.* at 33.

35 The proposed cost sharing rules, which would prevent compensation for premiums and (continued...)

sharing mechanism that will result in higher prices for consumers (*i.e.*, without a cap) is not in the public interest.

Finally, PCS licensees which have already paid incumbent 2 GHz licensees to relocate should not be penalized for moving forward with clearing spectrum. By relocating incumbent licensees without delay, PCS licensees have facilitated the rapid deployment of PCS service. Accordingly, the Commission should require other PCS licensees to share in the costs associated with any relocation occurring after April 5, 1995 — the commencement of the voluntary negotiation period.

VII. The Voluntary Negotiation Period Should Be Shortened For Non-Public Safety Licensees

After reviewing the comments in this proceeding, BellSouth concurs with the proposal submitted by the Sprint Telecommunications Venture to shorten the voluntary negotiation period to six months, followed by a one-year mandatory negotiation period.[36] BellSouth believes that shortening the voluntary negotiation period will foster good faith negotiations among microwave incumbents and PCS licensees regarding relocation.[37] As stated above, many incumbent licensees currently view the voluntary negotiation period as a mechanism to exact premiums. By shortening the voluntary negotiation period, the Commission will reduce the pressure on PCS licensees to pay premiums if they wish to deploy their systems quickly. Further, incumbent

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35 (...continued)
would encourage early relocation, benefit entrepreneurs and small businesses by capping their relocation expenses and encouraging entire microwave system relocation, which would clear their spectrum.

36 However, the Commission may wish to eliminate the voluntary negotiation period in its entirety. *See* BellSouth Comments at 6-7.

37 *See* BellSouth Comments at 7.

licensees will be more willing to relocate to comparable facilities, without the payment of premiums, if they knew that they could be involuntarily relocated in less than two years.

CONCLUSION

For the foregoing reasons, BellSouth urges the Commission to issue a Notice of Proposed Rule Making consistent with its comments and the proposal submitted by PCIA.

Respectfully submitted,

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I, Donna M. Crichlow, hereby certify that on this 30th day of June, 1995, a copy of the foregoing "Reply Comments" was served by first-class, United States Mail, postage prepaid, to the following:

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